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Letter dated 17 August 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 5 May 2004 (S/2004/364). The Counter-Terrorism Committee has received the attached third report from Kyrgyzstan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 10 August 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kyrgyzstan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit herewith the answers to the questions and additional information (additional report) on the report of the Kyrgyz Republic submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure). The information about the proposals of the working group for the introduction of amendments to the current criminal legislation relating to the increase in penalties for participation in terrorist activity will be provided soon (paragraph 1.7 "Implementation measures").

(*Signed*) Kainarbek **Toktomushev**
Chargé d'affaires a.i.
Permanent Mission of the Kyrgyz Republic to the United Nations

Enclosure

[Original: Russian]

Supplementary report of the Government of the Kyrgyz Republic in response to the questions and comments of the United Nations Security Council Counter-Terrorism Committee

Question:

Kyrgyzstan stated in its second report (at page 3) that the bill on combating the financing of terrorism and the laundering of income had been referred to the Parliament. **The CTC would appreciate receiving an outline of the relevant provisions of this bill as well as a progress report on its enactment.**

Response:

The enactment of the bill on combating the financing of terrorism and the laundering of income is a first step towards strengthening the legislation on the financing of terrorism and the laundering of income.

The main provisions of the bill concern:

- Establishment of a financial monitoring body — a Financial Investigation Unit — to achieve the aims and purposes of the bill;
- Raising the requirements governing identification of clients of financial organizations (without which banks are not authorized to open accounts or carry out transactions thereon, or to open anonymous accounts, etc.);
- Establishment of a 10-year period for preservation of information and records relating to all clients and all transactions carried out by them;
- Establishment of requirements governing compulsory monitoring of business deals and transactions with States that illicitly produce narcotic drugs;
- Establishment of requirements governing the drafting by banks of internal monitoring rules to combat the laundering of income obtained by criminal means and the financing of terrorism;
- Establishment of norms to provide access by a duly authorized body to all databases and registers held by public authorities;
- The imperative for all credit, banking and financial institutions to exercise particular vigilance over transactions involving organizations and entities from States or territories that are not implementing the Financial Action Task Force (FATF) recommendations or are insufficiently implementing them;
- Monitoring of transactions carried out by politically significant entities, etc.

The bill on combating the financing of terrorism and the laundering of income obtained by criminal means was approved by a decision of the Board of the National Bank of the Kyrgyz Republic of 4 September 2002.

The Government approved the bill by a decree of 2 December 2002.

On 13 February 2003, the bill was discussed by the Budget and Finance Committee of the Legislative Assembly of the *Zhogorku Kenesh* (Parliament). In response to questions raised by individual deputies, the Committee decided to hold consultations on article 7 of the bill, which establishes a list of criteria for compulsory monitoring of transactions.

On 20 May 2003, the bill was approved by the Budget and Finance Committee. Its discussion by the Parliament was also planned.

By Government order of 25 August 2003, a working group was established to revise the bill in line with the 40 new FATF recommendations. The group comprised Mr. U. K. Sarbanov (group leader), Chairman of the National Bank; Mr. A. A. Sultanov, deputy of the Legislative Assembly (lower house of Parliament); and staff of the Office of the Prime Minister, the Ministry of Home Affairs, the National Security Service, the Science and Research Institute of the Ministry of Home Affairs and the Financial Police under the Ministry of Finance.

This working group carried out the revision of the bill.

On 14 October 2003, a letter was received from the International Monetary Fund (IMF) requesting a copy of the bill.

On 27 October and 14 November 2003, pursuant to resolutions of the Chairman of the National Bank, the bill was transmitted to the Legal Department of IMF.

From 5 to 11 February 2004, a delegation from IMF consisting of IMF experts Margaret Cotter and Teresa Donovan visited the National Bank in connection with the revision of the bill on combating the financing of terrorism and the laundering of income obtained by criminal means to take into account the 40+8 FATF recommendations. The delegation was presented with a memorandum containing the National Bank's response.

The bill was then revised, taking into account the work of the IMF delegation and the new 40+8 FATF recommendations.

The final meetings of the working group established by Government order of 25 August 2003 were held on 12 and 15 March 2004.

The bill was approved by a Government decree of 31 March 2004.

On 27 May 2004, it was discussed and approved by the Legislative Assembly Committee on Law and Order and Control of Crime and Corruption.

On 28 May 2004, the bill was read and approved by the Budget and Finance Committee, taking into account observations and proposals made by deputies and by the Association of Commercial Banks and Financial and Finance/Credit Institutions of Kyrgyzstan.

In June 2004, the bill was submitted for consideration to the Legislative Assembly of the *Zhogorku Kenesh* (Parliament). It is currently before a plenary session of the chamber of the Legislative Assembly.

Consideration of the bill has been postponed until autumn 2004.

Consideration of the following two bills currently before the Parliament is also to be postponed until the autumn:

1. A bill introducing amendments to the Code on Administrative Responsibility, which would establish administrative liability for failure by organizations conducting transactions involving monetary or other movable and/or fixed assets to comply with the provisions of the legislation to combat the financing of terrorism and the laundering of income obtained by criminal means relating to the recording, storage and provision of information concerning transactions that are subject to compulsory monitoring, as well as internal monitoring procedures;

2. A bill introducing amendments to the Criminal Code, proposing a complete revision of article 183 on the laundering of income obtained by criminal means and a new article 226-1 establishing liability for the financing of terrorism.

Question:

For effective implementation of subparagraph 1 (a) of the resolution, *States are required, inter alia, to regulate alternative money remittance services such as hawala*. Kyrgyzstan indicated in its second report (at page 4) that the extent of transfers through alternative informal networks is negligible. **The CTC would, nevertheless, welcome an indication from Kyrgyzstan of what steps it intends to take in order to fully meet the requirements of this subparagraph of the resolution**.

Response:

A State system for classification of payment transactions was established by a decision of the Board of the National Bank (of 3 September 2003, registered with the Ministry of Justice on 26 September 2003) to ensure openness and transparency of payments and to create a system of indices for analysing non-cash flows in the Kyrgyz Republic.

In addition, the Bank carries out regular analyses of international payments, settlements and monetary transfers, broken down by currency, number of transactions and money transfer system used, as well as analyses of the banking services market, based on information provided by the Republic's commercial banks.

It should be noted that by joint resolution No. 916 of 31 December 2002, the Government and the National Bank approved a State programme for 2003-2005 which envisages reform of the banking and payments systems to ensure optimal correlation of cash and non-cash monetary transfers in the Kyrgyz Republic and the creation of an effective system of non-cash settlements and corresponding infrastructure.

The National Bank is currently carrying out a range of measures to implement the State programme and to establish a stand-by centre to ensure the functioning of the payments system in the event of unforeseen circumstances. In addition, in the area of reforms of the payments system, a new version of the draft statute on non-cash settlements in the Kyrgyz Republic is being prepared which would regulate relations arising from non-cash payments and monetary transfers when using new, effective payment tools, such as direct debit, bank payment cards, etc.

Successful implementation of the above-mentioned measures will allow for enhanced monitoring of the circulation of monetary assets, transparency of non-cash

monetary flows and qualitatively enhanced development of the financial sector as a whole.

Under the bill on combating the financing of terrorism and the laundering of income obtained by criminal means, regulation of alternative money remittance services, such as "hawala", will be carried out by a duly authorized financial monitoring body which will be able to transmit to law-enforcement agencies information on any breaches of the law which are detected.

Question:

For effective implementation of subparagraph 1 (a) of the resolution, *States are required, inter alia, to impose an obligation on financial institutions and other intermediaries to report suspicious transactions to the relevant authorities.* The CTC notes (at page 4) of the second report that the National Bank of Kyrgyzstan has sent a **circular letter** to banks, financial and credit institutions recommending that internal procedures be established for identifying and tracking their customers, and for recognizing and detecting any unusual activity. The CTC would be grateful to receive a progress report on **steps taken to require banks, financial and credit institutions to report unusual activity to the National Bank or other authority, and whether Kyrgyzstan intends to extend the obligation to report suspicious transactions to other intermediaries.**

Response:

In order to safeguard Kyrgyzstan's reputation, protect its financial and banking system and ensure that its banks are not used for transactions involving the laundering of income obtained by criminal means, the National Bank has adopted regulatory measures including provisions that prevent the use of banks and their subsidiaries for fraudulent and other unlawful activities. These include:

- Strict requirements to establish the identity of clients wishing to open accounts, or of persons requesting a bank to conduct specific transactions. For this purpose, temporary instructions for handling deposits have been drawn up (approved by decision No. 4/4 of the Board of the National Bank of 19 February 2003 and registered with the Ministry of Justice as decree No. 35-03 of 25 March 2003);

- A decision has been adopted establishing requirements for identifying entities operating in offshore zones and drawing up lists of such zones (decision No. 13/2 of 16 April 2003 of the Board of the National Bank, registered with the Ministry of Justice as decree No. 37-03 of 22 April 2003) in order to prevent transactions for the legalization (laundering) of income obtained by criminal means, to support efforts to combat the financing of terrorism and to ensure transparency of bank transactions. In addition, amendments and additions have been made to article 8 of the Act on banks and banking activities in the Kyrgyz Republic (Act No. 63 of 26 March 2003), which now specifically prohibits entities registered in offshore zones from holding capital in Kyrgyz banks (the list of offshore zones is established by the National Bank).

The bill on combating the financing of terrorism and the laundering of income obtained by criminal means makes it compulsory to report information on suspicious transactions and transactions involving monetary assets or other movable

or fixed property that are covered by the list of criteria for compulsory monitoring of transactions and applies to the following entities:

> "Information-reporting entities, namely any of the following natural and/or legal persons: banks (including subsidiaries), financial/credit and other institutions that are licensed and regulated by the National Bank, including exchange bureaux and pawnshops; professional stockbrokers; commodity exchanges; insurance companies; organizations and individuals entrusted with the management of property; casinos and other gaming institutions possessing slot machines, roulettes, or other gaming equipment or devices, betting shops, as well as creators and organizers of lotteries, totalizators and computer (electronic) games; organizations that register rights to fixed and/or moveable property with the State Vehicular Inspectorate; postal and telegraph services performing money transfers and other organizations making settlements and/or payments; agents for transactions involving fixed assets, if they are involved in transactions for the purchase or sale of fixed assets on behalf of their clients; precious-metal and precious-stone merchants involved in any cash transactions with clients; lawyers, notaries, accountants, auditors and other persons planning or carrying out transactions or business deals on behalf of their clients in the following areas: purchase and sale of fixed property; management of monetary assets, shares or other assets on behalf of their clients, opening and management of share portfolios, raising funds to establish organizations or to ensure their functioning, management, purchase or sale; leasing operations; charities; entities of offshore zones conducting activities in the Kyrgyz Republic."

Question:

For effective implementation of subparagraph 1 (a), *States are required to freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit, attempt to commit or participate in or facilitate the commission of terrorist acts.* It should be noted that for this purpose, the funds and other financial resources need not be the proceeds of crime but could be legal in origin and yet be used for terrorism either within or outside the territory of Kyrgyzstan. In its second report (at page 6) Kyrgyzstan indicated that the procedure for freezing assets assumed to belong to terrorists is provided for in the bill on combating the financing of terrorism and the laundering of income obtained by criminal means. The CTC would be grateful to **receive an outline of the relevant provisions of that bill and a progress report on its enactment.**

Response:

Under article 3 of the bill on combating the financing of terrorism and the laundering of income obtained by criminal means, banks and other financial or credit institutions authorized to open and maintain bank accounts are required to suspend the transactions of natural and legal persons reported to be involved in terrorist activities (or the financing of terrorism) within three working days of the date on which the client's transaction order would have been carried out, and to transmit the information to a duly authorized State body no more than one day following the suspension of the transaction.

If, within the stipulated time frame, no order has been received from the duly authorized body to suspend for a further period the relevant transaction by natural or legal persons reported to be involved in terrorist activities (or the financing of terrorism), then banks and other financial or credit institutions authorized to open and maintain bank accounts may execute the transaction in monetary or other assets as directed by the client.

A duly authorized State body may suspend transactions involving monetary or other assets for up to five working days even if only one of the parties engaging in such transactions is a natural or legal person reported to be involved in terrorist activities (or the financing of terrorism).

The suspension or halting of monetary and other transactions of natural and legal persons reported to be involved in terrorist activities (or in the financing of terrorism) for an additional period of time beyond the deadline prescribed by order of a duly authorized body requires an instruction, decision or ruling by a court, or a decision by the authorities investigating the matter, accompanied by the authorization of the public prosecutor.

If, within the time frame stipulated in the order by a duly authorized body, no such instruction, decision or ruling by a court or decision by the investigatory authorities with the authorization of the public prosecutor to suspend the relevant transactions for an additional period of time or to halt them has been received, then banks and other financial or credit institutions authorized to open and maintain bank accounts may execute the transaction in monetary or other assets as directed by the client.

A progress report on the enactment of this bill has been provided in response to the first question.

Question:

Effective implementation of subparagraph 1 (d) of the resolution *requires a State to have in place a mechanism to register, audit and monitor the collection and use of funds and other resources by religious, charitable and other associations*, with a view to ensuring that these are not diverted from their stated purposes, in particular, to the financing of terrorism. The CTC would be grateful **to receive an indication of steps it intends taking in order to fully meet the requirements of this subparagraph of the resolution.**

Response:

In the bill on the financing of terrorism and the laundering of income obtained by criminal means, it is noted that the main purpose of the law is to create a legislative basis for the prevention, detection and investigation of activities linked to the financing of terrorism and the laundering of income obtained by criminal means and to provide for the establishment and activities of a duly authorized State body responsible for receiving, analysing and circulating information on suspicious transactions and transactions subject to compulsory monitoring under the provisions of the law with the right to demand that entities reporting information adopt the measures to combat the financing of terrorism and the laundering of income obtained by criminal means envisaged in this law and in other regulatory instruments insofar as they do not contradict the provisions of this law.

The bill is aimed at regulating relations between citizens of the Kyrgyz Republic, foreign citizens, stateless persons permanently resident in the Kyrgyz Republic and organizations conducting transactions involving monetary or other assets with a view to preventing, detecting and suppressing activities linked to the financing of terrorism and the laundering of income obtained by criminal means.

Question:

Subparagraph 2 (e) of the resolution requires States, inter alia, to ensure in their domestic law that punishment *reflects the seriousness of terrorist acts*. In reply to this subparagraph, Kyrgyzstan indicated in its second report (at page 14) that a **working group** was established to draw up proposals for the introduction of amendments to the current criminal legislation relating to the increase in penalties for participation in terrorist activity. The CTC would be grateful **to receive a progress report on the proposals.**

Response:

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Question:

Kyrgyzstan stated in its second report (at page 20) in response to subparagraph 3 (e) of the resolution that, under article 12 of the Kyrgyzstan Constitution, *international treaties and agreements which have taken effect in accordance with a procedure prescribed by law, are an integral part of the laws of Kyrgyzstan*. The CTC would like to know how Kyrgyzstan authorities enforce the provisions of international instruments in practice, in the absence of specific legislation. For example, how are penal sanctions imposed in relation to conduct that is required to be criminalized by the provisions of an international instrument to which Kyrgyzstan is a party?

Response:

Under Act No. 89 of 21 July 1999 on international treaties to which the Kyrgyz Republic is a party, international treaties constitute the legal basis for the Kyrgyz Republic's international relations and, in accordance with the Constitution, are an integral and directly enforceable part of the legislation of the Kyrgyz Republic.

In addition, article 18 of the Act on international treaties provides for the immediate enactment of a law or additional legislation in the event of discrepancies between the norms of an international treaty and the Republic's legislation or for the purposes of implementing an international treaty to which the Kyrgyz Republic is a party.

Further, article 19 of the Act envisages a special procedure for declaring acceptance of the binding nature of international treaties on the Kyrgyz Republic. Accordingly, if an international treaty contains stipulations that necessitate amendments to individual provisions of the Constitution, a legislative decision as to its binding nature on the Kyrgyz Republic may be enacted only once the relevant revisions have been made to the Constitution or a review of its provisions has been conducted according to established procedure.

The Kyrgyz Republic believes in strict observance of the norms of international law and wishes to reaffirm its adherence to the basic principle of international law — the principle of implementation, in good faith, of international obligations.

Question:

The CTC would be grateful for a report on the implementation in domestic law of the relevant conventions and protocols relating to terrorism to which Kyrgyzstan has already become a party, **as well as a progress report on Kyrgyzstan's joining the relevant conventions and protocols relating to terrorism to which it has yet to become a party.**

Response:

The Kyrgyz Republic has acceded to the following international conventions on combating terrorism:

- International Convention for the Suppression of the Financing of Terrorism (1999);
- International Convention for the Suppression of Terrorist Bombing (1997);
- Convention on the Marking of Plastic Explosives for the Purpose of Identification (1991);
- International Convention Against the Taking of Hostages (1979);
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973);
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
- Shanghai Convention on Combating Terrorism, Separatism and Extremism (ratified by the Kyrgyz Republic on 10 April 2002).

In addition, internal procedures are under way to enable Kyrgyzstan to accede to the following conventions and agreements on combating terrorism:

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988);
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988);
- Convention on the Physical Protection of Nuclear Material (1987).

Question:

The CTC is aware that Kyrgyzstan may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to **receive a copy of any such report or questionnaire as part of Kyrgyzstan's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of the resolution.**

Response:

We have no such report or questionnaire at our disposal relevant to the implementation of the resolution.